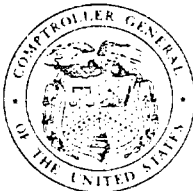


DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-185106

DATE: March 9, 1976

MATTER OF: Fisher-Klosterman, Inc.

DIGEST:

Determination of nonresponsiveness of bid, because of provision imposing a 1.5 percent service charge per month on past due accounts, was proper under ASPR § 2.404-2 (1975 ed.) as condition affected price and could not, therefore, be deleted or waived as minor informality or irregularity.

Invitation for bids (IFB) No. N00164-76-B-0002 was issued by the Naval Weapons Support Center, Crane, Indiana (NWSC), on September 3, 1975. At bid opening Fisher-Klosterman, Inc., was the apparent low bidder. However, examination of Fisher-Klosterman's bid by the Navy disclosed that additional terms and conditions, imposed in the attached summary, would modify the requirements of the solicitation. The contracting officer, accordingly, rejected the Fisher-Klosterman bid as being nonresponsive. A protest against the determination of nonresponsiveness and proposed award to Aeropulse, Inc. (second low bidder), was thereafter filed in this Office by Fisher-Klosterman.

Fisher-Klosterman contends that the bid summary containing the additional requirements did not qualify or affect its bid as submitted on Standard Form 33. It is contended that the summary was intended only to furnish the specific equipment details, as required under the solicitation, and not to impose different requirements than those in the IFB. Fisher-Klosterman also contends that it inadvertently included those paragraphs as they were copied from a standard form used in proposals to potential commercial customers. Therefore, Fisher-Klosterman requests waiver of the objectionable terms listed in the summary as minor informalities or irregularities.


As stated in Lift Power, Inc., B-182604, January 10, 1975, 75-1 CPD 13, "The question of the responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items in total conformance with the terms and specifications requirements of the invitation." (Emphasis supplied.) Only material available at bid opening may be considered in making this determination. Furthermore, it does not matter whether any nonconforming terms were included by inadvertence or mistake. 52 Comp. Gen. 604 (1973). Reliance on information supplied by a bidder after bid opening is not permissible, as such a practice would allow the bidder an opportunity to affect the responsiveness of its bid. 52 Comp. Gen. supra.

In this regard, the language found on page 8, paragraph C-8 of the Fisher-Klosterman summary (concerning the imposition of a 1.5 percent per month service charge on all past due accounts) would necessitate rejection of the bid as the price the procuring agency would be obligated to pay under the contract with Fisher-Klosterman could not be determined at the time of award. See Armed Services Procurement Regulation § 2-404.2(d)(i) (1975 ed.); and Joy Manufacturing Company, 54 Comp. Gen. 237, 74-2 CPD 183; 50 Comp. Gen. 731 (1971), involving similar provisions of the Federal Procurement Regulations.

Furthermore waiver of minor informalities or irregularities in bids is limited to conditions which do not go to the substance, as distinguished from the form, of a bid. A condition goes to the substance of the bid when it affects price, quantity, quality or delivery of the items offered. ASPR § 2-404.2(d), supra.

For the foregoing reason, the bid of Fisher-Klosterman was properly rejected as being nonresponsive. Therefore, it is not necessary to consider the other terms of the summary which were also considered qualifying.

The protest is denied.


Acting Comptroller General
of the United States